



## AGENDA BILL APPROVAL FORM

<b>Agenda Subject:</b> Resolution No. 4549		<b>Date:</b> December 1, 2009
<b>Department:</b> Finance	<b>Attachments:</b> Resolution No. 4549 & Exhibit A	<b>Budget Impact:</b>
<b>Administrative Recommendation:</b>  City Council adopt Resolution No. 4549.		
<b>Background Summary:</b>  Resolution No. 4549 authorizes the Mayor and City Clerk to execute an agreement for services with Thompson Smith Consulting Group Inc. to assist the City to secure water rights from the Washington State Department of Ecology for the purpose of meeting the City's water needs.		
N1221-2 A3.16.3		
<b>Reviewed by Council &amp; Committees:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Arts Commission  <input type="checkbox"/> Airport  <input type="checkbox"/> Hearing Examiner  <input type="checkbox"/> Human Services  <input type="checkbox"/> Park Board  <input type="checkbox"/> Planning Comm.         </div> <div> <b>COUNCIL COMMITTEES:</b>  <input checked="" type="checkbox"/> Finance  <input type="checkbox"/> Municipal Serv.  <input type="checkbox"/> Planning &amp; CD  <input checked="" type="checkbox"/> Public Works  <input type="checkbox"/> Other _____         </div> </div>		<b>Reviewed by Departments &amp; Divisions:</b> <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Building  <input type="checkbox"/> Cemetery  <input type="checkbox"/> Finance  <input type="checkbox"/> Fire  <input type="checkbox"/> Legal  <input type="checkbox"/> Public Works  <input type="checkbox"/> Information Services         </div> <div> <input type="checkbox"/> M&amp;O  <input type="checkbox"/> Mayor  <input type="checkbox"/> Parks  <input type="checkbox"/> Planning  <input type="checkbox"/> Police  <input type="checkbox"/> Human Resources         </div> </div>
<b>Action:</b> Committee Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No      Call for Public Hearing ____/____/____ Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____		
<b>Councilmember:</b> Backus		<b>Staff:</b> Coleman
<b>Meeting Date:</b> December 21, 2009		<b>Item Number:</b> VIII.B.3

## **RESOLUTION NO. 4 5 4 9**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE AN AGREEMENT WITH THOMPSON SMITCH CONSULTING GROUP, INC. TO ASSIST THE CITY TO SECURE WATER RIGHTS FROM THE WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR THE PURPOSES OF MEETING THE CITY'S WATER NEEDS

WHEREAS, the City is engaged in or readying itself to be engaged in its project of securing a right from the Washington Department of Ecology for purposes of meeting the City's water supply needs, and is in need of services on said project; and

WHEREAS, the City desires to retain the Thompson Smitch Consulting Group, Inc. to provide certain services in connection with the work on said project; and

WHEREAS, the consultant is qualified and able to provide consulting services in connection with the City's needs for the above-described work/project, and is willing and agreeable to provide such services upon the terms and conditions of the attached agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

**Section 1. Purpose.** The Mayor and City Clerk of the City of Auburn are hereby authorized to execute an agreement of consulting services between the City of Auburn and Thompson Smitch Consulting Group, Inc. to assist the City to secure water rights from the Washington State Department of Ecology

for the purposes of meeting the City's water supply needs. A copy of said agreement is attached hereto, designated as Exhibit "A" and incorporated by reference to this Resolution.

**Section 2. Implementation.** The Mayor of the City of Auburn is hereby authorized to implement such administrative procedures as may be necessary to carry out the directives of this resolution.

**Section 3. Effective Date.** This Resolution shall take effect and be in full force upon passage and signatures hereon.

DATED and SIGNED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2009.

CITY OF AUBURN

---

PETER B. LEWIS  
MAYOR

ATTEST:

---

Danielle E. Daskam,  
City Clerk

APPROVED AS TO FORM:



---

Daniel B. Heid,  
City Attorney

Exhibit A  
Resolution No. 4549

**CITY OF AUBURN AGREEMENT  
FOR CONSULTING SERVICES**

THIS AGREEMENT made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the City of Auburn, a municipal corporation of the State of Washington, hereinafter referred to as "City" and Thompson Smitch Consulting Group, Inc., hereinafter referred to as the "Consultant."

WITNESSETH:

WHEREAS, the City is engaged in or readying itself to be engaged in its project of securing a right from Washington Department of Ecology for purposes of meeting the City's water supply needs, and is in need of services of individuals, employees or firms for work on said project; and,

WHEREAS, the City desires to retain the Consultant to provide certain services in connection with the City's work on said project; and,

WHEREAS, the Consultant is qualified and able to provide consulting services in connection with the City's needs for the above-described work/project, and is willing and agreeable to provide such services upon the terms and conditions herein contained.

NOW, THEREFORE, the parties hereto agree as follows:

1. Scope of Services.

The Consultant agrees to perform in a good and professional manner the tasks described as follows:

- Assist the City to secure water rights from the Washington State Department of Ecology for the purposes of meeting the City's water supply needs.

The Consultant shall perform the services as an independent contractor and shall not be deemed, by virtue of this Agreement and the performance thereof, to have entered into any partnership, joint venture, employment or other relationship with the City.

2. Additional Services.

From time to time hereafter, the parties hereto may agree to the performance by the Consultant of additional services with respect to related work or projects. Any such agreement(s) shall be set forth in writing and shall be executed by the respective parties prior to the Consultant's performance of the services there under, except as may be provided to the contrary in Section 3 of this Agreement. Upon proper completion and execution of an addendum (agreement for additional services), such addendum shall be incorporated into this Agreement and shall have the same force and effect as if the terms of such addendum were a part of this Agreement as originally executed. The performance of services pursuant to an addendum shall be subject to the terms and

conditions of this Agreement except where the addendum provides to the contrary, in which case the terms and conditions of any such addendum shall control. In all other respects, any addendum shall supplement and be construed in accordance with the terms and conditions of this Agreement.

3. Performance of Additional Services Prior to Execution of an Addendum.

The parties hereby agree that situations may arise in which services other than those described above are desired by the City and the time period for the completion of such services makes the execution of addendum impractical prior to the commencement of the Consultant's performance of the requested services. The Consultant hereby agrees that it shall perform such services upon the oral request of an authorized representative of the City pending execution of an addendum, at a rate of compensation to be agreed to in connection therewith. The invoice procedure for any such additional services shall be as described in Section 7 of this Agreement.

4. Consultant's Representations.

The Consultant hereby represents and warrants that he has all necessary licenses and certifications to perform the services provided for herein, and is qualified to perform such services.

5. City's Responsibilities.

The City shall do the following in a timely manner so as not to delay the services of the Consultant:

- a. Designate in writing a person to act as the City's representative with respect to the services. The City's designee shall have complete authority to transmit instructions, receive information, interpret and define the City's policies and decisions with respect to the services.
- b. Furnish the Consultant with all information, criteria, objectives, schedules and standards for the project and the services provided for herein.
- c. Arrange for access to the property or facilities as required for the Consultant to perform the services provided for herein.
- d. Examine and evaluate all studies, reports, memoranda, plans, sketches, and other documents prepared by the Consultant and render decisions regarding such documents in a timely manner to prevent delay of the services.

6. Acceptable Standards.

The Consultant shall be responsible to provide, in connection with the services contemplated in this Agreement, work product and services of a quality and professional standard acceptable to the City.

7. Compensation.

As compensation for the Consultant's performance of the services provided for herein, the City shall pay the Consultant the fees and costs specified as follows:

- \$7,500 per month during the term of this Agreement.
- Contract not to exceed \$22,500.

The Consultant shall submit to the City an invoice or statement of time spent on tasks included in the scope of work provided herein, and the City shall process the invoice or statement in the next billing/claim cycle following receipt of the invoice or statement, and shall remit payment to the Consultant thereafter in the normal course, subject to any conditions or provisions in this Agreement or addendum.

8. Time for Performance and Term of Agreement.

The Consultant shall perform the services provided for herein in accordance with the direction and scheduling provided by the City, unless otherwise agreed to in writing by the parties. The Term of this Agreement shall commence on the date hereof or on the first day of January, 2010 through the 31<sup>st</sup> day of March, 2010.

9. Ownership and Use of Documents.

All documents, reports, memoranda, diagrams, sketches, plans, surveys, design calculations, working drawings and any other materials created or otherwise prepared by the Consultant as part of his performance of this Agreement (the "Work Products") shall be owned by and become the property of the City, and may be used by the City for any purpose beneficial to the City.

10. Records Inspection and Audit.

All compensation payments shall be subject to the adjustments for any amounts found upon audit or otherwise to have been improperly invoiced, and all records and books of accounts pertaining to any work performed under this Agreement shall be subject to inspection and audit by the City for a period of up to three (3) years from the final payment for work performed under this Agreement.

11. Continuation of Performance.

In the event that any dispute or conflict arises between the parties while this Contract is in effect, the Consultant agrees that, notwithstanding such dispute or conflict, the Consultant shall continue to make a good faith effort to cooperate and continue work toward successful completion of assigned duties and responsibilities.

12. Administration of Agreement.

This Agreement shall be administered by \_\_\_\_\_, on behalf of the Consultant, and by the Mayor of the City, or designee, on behalf of the City. Any written notices required by the terms of this Agreement shall be served on or mailed to the following addresses:

City of Auburn  
Auburn City Hall  
25 West Main  
Auburn, WA 98001-4998  
(253) 931-3000 FAX (253) 931-3053

Consultant  
Thompson Smitch  
1821 Dock Street, Suite 103  
Tacoma, WA 98402  
(253) 879-1250 FAX (253) 879-1251

13. Notices.

All notices or communications permitted or required to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered in person or

deposited in the United States mail, postage prepaid, for mailing by certified mail, return receipt requested, and addressed, if to a party of this Agreement, to the address for the party set forth above, or if to a person not a party to this Agreement, to the address designated by a party to this Agreement in the foregoing manner.

Any party may change his, her or its address by giving notice in writing, stating his, her or its new address, to any other party, all pursuant to the procedure set forth in this section of the Agreement.

14. Insurance.

The Consultant shall be responsible for maintaining, during the term of this Agreement and at its sole cost and expense, the types of insurance coverages and in the amounts described below. The Consultant shall furnish evidence, satisfactory to the City, of all such policies. During the term hereof, the Consultant shall take out and maintain in full force and effect the following insurance policies:

- a. Comprehensive public liability insurance, including automobile and property damage, insuring the City and the Consultant against loss or liability for damages for personal injury, death or property damage arising out of or in connection with the performance by the Consultant of its obligations hereunder, with minimum liability limits of \$1,000,000.00 combined single limit for personal injury, death or property damage in any one occurrence.
- b. Such workmen's compensation and other similar insurance as may be required by law.
- c. Professional liability insurance with minimum liability limits of \$1,000,000.

15. Indemnification.

The Consultant shall indemnify and hold harmless the City and its officers, agents and employees, or any of them from any and all claims, actions, suits, liability, loss, costs, expenses, and damages of any nature whatsoever, by any reason of or arising out of the negligent act or omission of the Consultant, its officers, agents, employees, or any of them relating to or arising out of the performance of this Agreement. If a final judgment is rendered against the City, its officers, agents, employees and/or any of them, or jointly against the City and the Consultant and their respective officers, agents and employees, or any of them, the Consultant shall satisfy the same to the extent that such judgment was due to the Consultant's negligent acts or omissions.

16. Assignment.

Neither party to this Agreement shall assign any right or obligation hereunder in whole or in part, without the prior written consent of the other party hereto. No assignment or transfer of any interest under this Agreement shall be deemed to release the assignor from any liability or obligation under this Agreement, or to cause any such liability or obligation to be reduced to a secondary liability or obligation.

17. Amendment, Modification or Waiver.

No amendment, modification or waiver of any condition, provision or term of this Agreement shall be valid or of any effect unless made in writing, signed by the party or parties to be bound, or such party's or parties' duly authorized representative(s) and specifying with particularity the nature and extent of such amendment, modification or waiver. Any waiver by any party of any default of the other party shall not effect or impair any right arising from any subsequent default.

Nothing herein shall limit the remedies or rights of the parties hereto under and pursuant to this Agreement.

18. Termination and Suspension.

Either party may terminate this Agreement upon written notice to the other party if the other party fails substantially to perform in accordance with the terms of this Agreement through no fault of the party terminating the Agreement.

The City may terminate this Agreement upon not less than seven (7) days written notice to the Consultant if the services provided for herein are no longer needed from the Consultant.

If this Agreement is terminated through no fault of the Consultant, the Consultant shall be compensated for services performed prior to termination in accordance with the rate of compensation provided for herein for the months of service provided prior to termination.

19. Parties in Interest.

This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to and bind, the parties hereto and their respective successors and assigns, provided that this section shall not be deemed to permit any transfer or assignment otherwise prohibited by this Agreement. This Agreement is for the exclusive benefit of the parties hereto and it does not create a contractual relationship with or exist for the benefit of any third party, including contractors, sub-contractors and their sureties.

20. Costs to Prevailing Party.

In the event of such litigation or other legal action, to enforce any rights, responsibilities or obligations under this Agreement, the prevailing parties shall be entitled to receive its reasonable costs and attorney's fees.

21. Applicable Law.

This Agreement and the rights of the parties hereunder shall be governed by the interpreted in accordance with the laws of the State of Washington and venue for any action hereunder shall be in of the county in Washington State in which the property or project is located, and if not site specific, then in King County, Washington; provided, however, that it is agreed and understood that any applicable statute of limitation shall commence no later than the substantial completion by the Consultant of the services.



22. Captions, Headings and Titles.

All captions, headings or titles in the paragraphs or sections of this Agreement are inserted for convenience of reference only and shall not constitute a part of this Agreement or act as a limitation of the scope of the particular paragraph or sections to which they apply. As used herein, where appropriate, the singular shall include the plural and vice versa and masculine, feminine and neuter expressions shall be interchangeable. Interpretation or construction of this Agreement shall not be affected by any determination as to who is the drafter of this Agreement, this Agreement having been drafted by mutual agreement of the parties.

23. Severable Provisions.

Each provision of this Agreement is intended to be severable. If any provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.

24. Entire Agreement.

This Agreement contains the entire understanding of the parties hereto in respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties with respect to such subject matter.

25. Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed effective the day and year first set forth above.

**CITY OF AUBURN**

**CONSULTANT**

\_\_\_\_\_  
Peter B. Lewis, Mayor

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Danielle E. Daskam City Clerk

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Daniel B. Heid, City Attorney